



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 668

IN THE MATTER
OF
RALPH CROSSEN

DISPOSITION AGREEMENT

The State Ethics Commission and Ralph Crossen enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On March 19, 2001, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Crossen. The Commission has concluded its inquiry and, on June 25, 2002, found reasonable cause to believe that Crossen violated G.L. c. 268A.

The Commission and Crossen now agree to the following findings of fact and conclusions of law.

Findings of Fact

From 1994 until September 2000, Crossen was the Barnstable building commissioner. As such, Crossen was a municipal employee as that term is defined in G.L. c. 268A, §1, and subject to the provisions of the conflict-of-interest law, G.L. c. 268A.

As the building commissioner, Crossen was the *ex officio* chair of the Barnstable Site Plan Review Committee ("the SPRC"). The SPRC comprised representatives from various town regulatory departments, such as building, planning, health and engineering. The SPRC, acting as a clearing house for development projects, met to review plans and advise applicants how to obtain town approvals for their projects, and endeavored to expedite the regulatory process.

Haseotes's Ice Cream Shop

Hyannis is a village within the town of Barnstable that also serves as the town's central business/commercial district.

In May 2000, Byron Haseotes Jr. filed a site plan with the building division regarding proposed renovations to a residential building on Ocean Street in Hyannis. Haseotes also filed a site plan review application with the SPRC, which stated in pertinent part

that the work was to convert an existing structure to retail use for the sale of ice cream and hot dogs. While the proposed business was to be strictly take-out, Haseotes planned to have some outdoor seating.

On June 8, 2000, the SPRC met to consider Haseotes's site plan review application. Crossen chaired the meeting in his capacity as building commissioner and *ex officio* SPRC chair. The Health Department representative noted that the proposed seating, indicating a restaurant use, would trigger a public restroom requirement unless Haseotes got a variance. Crossen advised that the plan could be approved that day if the outdoor seating were eliminated. Undecided about how to proceed, Haseotes's representative indicated that Haseotes would advise the SPRC at a later date.

Following the June 8, 2000 meeting, the SPRC, including Crossen, administratively approved Haseotes's plan for retail use only. Haseotes was advised to file with the Zoning Board of Appeals ("the ZBA") to obtain a special permit allowing a restaurant in a retail zone.

Crossen left his municipal position as building commissioner and *ex officio* SPRC chair in September 2000.

On September 28, 2000, the town's Licensing Board informed Haseotes that any seating for dining at the ice cream shop would require a common victualer license. Thus, the Licensing Board had concluded that the ice cream shop was a restaurant.¹

At some point, Haseotes decided to create the seating that he wanted by constructing a canopy awning adjacent to the ice cream shop. Haseotes began this work without obtaining the necessary permits and/or approvals from the Historic District Commission ("the HDC") and the Building Department.

On November 6, 2000, Building Commissioner Elbert Ulshoeffer (Crossen's successor) issued a stop work order to Haseotes because, in part, he had not obtained an historic or building permit for the awning.

Crossen's Acts of Agency and Receipt of Compensation

After leaving his municipal position in September 2000, Crossen began to work as a consultant under the name R.M. Crossen & Associates. In that capacity, Crossen helped permit applicants to navigate Barnstable's complex regulatory process.

In January 2001, Haseotes hired Crossen to provide consulting services and assist him in obtaining the various permits required for his ice cream shop.

¹ This conclusion was later found to be incorrect.

Among other tasks, Crossen met with Building Commissioner Ulshoeffer in early 2001 to find out what was needed to deal with the stop work order and to discuss other pending matters, including the restaurant use issue.

During their meeting, Crossen told Ulshoeffer that he did not understand how the Licensing Board had concluded that the ice cream shop was a restaurant. According to Crossen, the town ordinance did not support this conclusion. Crossen pointed out that the seating was outdoor, not indoor, that there was no waitstaff, and that there were three other ice cream/take-out businesses in town that were not considered restaurants. Crossen then explained that Haseotes's business was a retail use and not a restaurant use.

After their meeting, Ulshoeffer researched the restaurant use issue and concluded that Crossen's position that Haseotes's business was a retail use was correct.

In the meantime, on February 5, 2001, Haseotes himself filed an application for SPRC approval regarding the awning and outside seating.

On February 15, 2001, the SPRC met to consider approval for Haseotes's outside seating area and awning. The board deferred to Ulshoeffer on the restaurant use issue. Ulshoeffer explained to the board that Haseotes's business was a take-out food service and not a restaurant. The SPRC approved the plan.

Crossen attended the February 15, 2001 SPRC meeting as part of his consulting duties for Haseotes.

By March 23, 2001, Haseotes had paid Crossen a portion of what he had agreed to pay him for his consulting work.

Conclusions of Law

Section 18(a) of G.L. c. 268A prohibits a former municipal employee from knowingly acting as agent for or receiving compensation² from anyone other than the same municipality in connection with any particular matter³ in which the municipality is a party

² "Compensation" means any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another. G.L. c. 268A, §1(a).

³ "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

or has a direct and substantial interest, and in which matter he participated⁴ as a municipal employee.

The determination regarding whether Haseotes's shop involved a restaurant use was a particular matter.

The restaurant use issue had serious significance for both the town and Haseotes in that it required Haseotes to obtain a special permit from the ZBA. Thus, the town was a party to and had a direct and substantial interest in that determination.

Crossen participated as building commissioner in the restaurant use determination at the SPRC meeting in June 2000.

Crossen became a former municipal employee when he left his position as building commissioner in September 2000.

In early 2001, Crossen met with Building Commissioner Ulshoeffer on behalf of Haseotes to discuss the restaurant use issue and argue to Ulshoeffer that Haseotes's shop was not a restaurant. Crossen received compensation for the work that he performed on behalf of Haseotes.

By meeting with the building commissioner on Haseotes's behalf to discuss the restaurant use issue, Crossen acted as agent for someone other than the town in connection with a particular matter in which the town was a party and/or had a direct and substantial interest, and in which matter Crossen had participated as a municipal employee. Therefore, Crossen violated §18(a).

In addition, by receiving money from Haseotes for his consulting work, including the work described in Paragraphs 13 and 14 above, Crossen received compensation from someone other than the town in relation to a particular matter in which the town was a party and/or had a direct and substantial interest, and in which matter Crossen had participated as a municipal employee. Therefore, Crossen violated §18(a).

Resolution

In view of the foregoing violations of G.L. c. 268A by Crossen, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Crossen:

- (1) that Crossen pay to the Commission the sum of \$1,000 as a civil penalty for violating G.L. c. 268A, §18(a);

⁴ "Participate" means participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

- (2) the Crossen pay to the Commission the additional sum of \$100, which represents compensation earned in violation of § 18; and
- (3) that Crossen waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 26, 2003